ABDULLAH A/L NOOR MOHAMED ABDUL LATIFF & ANOR.

v.

THE ALL MALAYAN ESTATES STAFF UNION

HIGH COURT MALAYA, KUALA LUMPUR
DATO' ABDUL AZIZ BIN MOHAMAD J
[APPLICATION FOR EXECUTION NO. 36-10-94]
15 DECEMBER 1995

PRACTICE & PROCEDURE: *Order 48 RHC - Appeal by trade union against dismissal of their application to set aside ex parte order for oral examination of an officer of the trade union - Whether a trade union is a body corporate - Whether an officer of a trade union is liable to be examined under O. 48.*

The defendants, a registered trade union, appealed against the dismissal by the Deputy Registrar of their application for an order to set aside an *ex parte* order for the oral examination of an officer of the defendants under O. 48 of the Rules of the High Court 1980 (RHC). The first ground of appeal; that the application for the order should not have been made *ex parte* was dismissed as baseless and the Court went on to consider the second ground of appeal that the defendants, being a trade union, are not a body corporate and therefore the Court cannot under O. 48, order their officer to be examined.

Held:

[1] The person who can be ordered to be examined under O. 48 is either the judgment debtor or an officer of the judgement debtor, but the power to order an officer of the judgment debtor to be examined can only be exercised "if the judgment debtor is a body corporate".

[2] There is a lacuna in O. 48 in that it has not provided for oral examination in the case of an unincorporated body. The power to order an officer to be examined is given only in the case of a body corporate. Since the defendants are not a body corporate, there is no power under O. 48 to order their officer to be examined.

[Appeal allowed. Order of the Deputy Registrar set aside. Costs to the defendants here and before the Deputy Registrar].

Case referred to:
Maclaine Watson & Co. v. ITC [1987] 1 WLR 1711 ***(foll)***

Legislation referred to:
Interpretation Act 1948 & 1967
Rules of the High Court 1980, O. 48
Trade Unions Act 1959, s. 25(6)
Trade Union and Labour Relations Act 1974, s. 2(1)

Other source referred to:
Halsbury's Laws of England, Vol. 9, 4th Edn., para 1201, Vol. 47, 4th Edn., para. 495

For the plaintiff - Cantius Leo Camoens (Counsel), M/s. Yusuf Lee Pathma & Marbeck
For the defendant - Abdul Malik bin Abdul Hakim (Counsel), M/s. Malik & Partners

JUDGMENT

Abdul Aziz Mohamad J:

This is an appeal by the defendants, a registered trade union, against the dismissal by the Deputy Registrar of their application for an order setting aside an order made *ex parte* by him on 29 March 1995 for the oral examination of an officer of the defendants under O. 48 of the Rules of the High Court 1980.

Paragraph (1) of rule 1 of that order says.

> 1. (1) Where a person has obtained a judgment or order for the payment by some other person (hereinafter referred to as "the judgment debtor") of money, the Court may, on an application made *ex parte* by summons supported by affidavit in Form 96 by the person entitled to enforce the judgment or order, order the judgment debtor, or, if the judgment debtor is a body corporate, an officer thereof, to attend before the Registrar, and be orally examined on the questions:
>
> (a) whether any and, if so, what debts are owing to the judgment debtor; and
>
> (b) whether the judgment debtor has any and, if so, what other property or means of satisfying the judgment or order,
>
> and the Court may also order the judgment debtor or officer to produce any books or documents in the possession of the judgment debtor relevant to the questions aforesaid at the time and place appointed for the examination.

There are two grounds for this appeal. One is that, for the reasons submitted by learned Counsel for the defendants, the application for the order should not have been made *ex parte*. I would dismiss that ground without discussing the reasons submitted because the rule expressly provides for an application to be made *ex parte* and learned Counsel for the defendants has not cited any authority that establishes that an application that the rules allow to be made ex *parte* must, under certain circumstances, be made *inter partes.*

The other ground for this appeal is that the defendants, being a trade union, are not a body corporate and therefore the Court cannot, under O. 48, order their officer to be examined. For saying that a trade union is not a body corporate, learned Counsel for the defendants relied principally on the fact that the nature of trade unions in this country is similar to that of trade unions in the United Kingdom and that it is said in paragraph 495 in Volume 47 of *Halsbury's Laws of England,* Fourth Edition, that "a trade union ... is not, nor is it to be treated as, a body corporate ...". From footnote 3 to that paragraph it appears that that position is expressly provided for by s. 2(1) of the Trade Union and Labour Relations Act 1974. There is no such provision in our Trade Unions Act 1959.

In paragraph 1201 in Volume 9 of *Halsbury's Laws of England,* Fourth Edition, there is to be found this statement:

> There are many associations and bodies of persons that are not corporations. Some of these ... " - that is, associations and bodies that are not corporations - "may be regarded as quasi corporations, as they have some of the usual attributes of corporations, such as the possession of a name in which they may sue or be sued, and the power (independently of any contract between the members) to hold property for the purposes defined by their objects and constitutions.

Then, in footnote 3 to that paragraph, there is to be found this statement:

> The most important category of quasi corporations, before the Industrial Relations Act 1971 came into force, was registered trade unions ... The Industrial Relations Act 1971 is now repealed by the Trade Union and Labour Relations Act 1974, s. 1, and by s. 2 of that Act a trade union may not be a body corporate although it has power to make contracts and, subject to certain exceptions, it may sue or be sued in its own name, and has other powers associated with those of a corporation.

It would appear from those statements that even before it was provided by statute that a trade union is not a body corporate, in England trade unions were regarded only as quasi corporations and, as can be seen from the statement in paragraph 1201, quasi corporations are not corporations. Incidentally, the term "corporation" is synonymous with "body corporate", and they are used inter-changeably.

Learned Counsel for the plaintiffs did not attempt to show that a trade union is a body corporate. In fact, he did agree that a trade union is not to be treated as a body corporate. I, for my part, cannot think of any reason for disagreeing that a trade union is not a body corporate, and I accept that a trade union is not a body corporate.

It is to be noted that the person who can be ordered to be examined under O. 48 is either the judgment debtor or an officer of the judgment debtor, but the power to order an officer of the judgment debtor to be examined can only be exercised "if the judgment debtor is a body corporate". There is no provision for the examination of an officer of a judgment debtor where the judgment debtor is a body that is not a body corporate. The examination of a judgment debtor directly (as opposed to the examination of an officer) must be intended for a judgment debtor who is an individual or a natural person because it would not be possible to examine a body directly. That can only be done through an officer of the body.

Learned Counsel for the plaintiffs argued that since "judgment debtor" in paragraph (1) is a person and since the Interpretation Act 1948 and 1967 defines "person" to include "any body of persons, corporate or unincorporated", a trade union, even if it be a body unincorporate, is also liable to be examined, and the person to be examined must be one of its officers because he is authorized by s. 25(6) of the Trade Unions Act 1959 to represent it in any civil proceedings in which it is a party. It must be pointed out, however, that the representation provided for by s. 25(6) is representation in suing for or defending a trade union, which is different from being a person to be examined. Learned Counsel for the plaintiffs might have submitted instead that since a trade union as an unincorporated body is liable to be examined under paragraph (1) and since paragraph (1) does not provide for the person actually to be examined, then logically it must be some proper officer of the trade union.

However, such line of argument was considered but rejected by Millett J in *Maclaine Watson & Co. v. I.T.C.* [1987] 1 WLR 1711, where a similar question arose in respect of the English O. 48, which is in *pare materia* with our O. 48, and where the unincorporated body was the International Tin Council. This is what Millett J said, at page 1714:

> The main submission on behalf of the ITC is simplicity itself. The ITC, it is said, is neither an individual nor a body corporate but an unincorporated association. As it is not an individual, it cannot attend before the master personally or be orally examined; and, as it is not a body corporate, O. 48 does not authorise the Court to order one of its officers to attend for that purpose. The applicants first sought to meet this submission by adopting a suggestion unwisely preferred from the Bench in the course of argument. Pointing out that by virtue of the Interpretation Act 1978 the word 'person' in O. 48 includes a body of persons corporate

a or unincorporate, they submitted that the order in terms authorises the Court to order any judgment debtor, whether an individual or a body of persons corporate or unincorporate, to attend before the master to be orally examined. Since only an individual can do so personally, this must mean, in the case of a body of persons, that the body should attend by some appropriate officer or member. On this reading of O. 48, the power to order a specified officer to attend is merely an alternative to the power to order the judgment debtor itself to attend by nominating some appropriate officer or member to do so. Thus the Order should be treated as if it read: 'the Court may ... *either* order the judgment debtor *(whether an individual or a body of persons corporate or unincorporate, and if a body of persons corporate or unincorporate by some appropriate officer or member which it may nominate)* or, if the judgment debtor is a body corporate, an officer thereof, to attend ...

I have been persuaded that this is not a possible construction of O. 48. It is not only a forced and unnatural construction, but by implying words into the Order it renders one of its express provisions pointless. Whatever the position might have been if the words 'or, if the judgment debtor is a body corporate, an officer thereof' were absent, their presence shows that attendance means personal attendance and excludes the possibility that a body of persons could be ordered to attend vicariously. The applicants pointed out that this leaves a lacuna in the case of an unincorporated association; but there is a lacuna anyway, for there is no power to make an order directly against an officer of such an association. The lacuna does not matter if the applicants are right, but it is still there none the less.

I can see no reason for me to differ from the opinion of Millett J. I agree that there is a lacuna in O. 48 in that it has not provided for oral examination in the case of an unincorporated body. The power to order an officer to be examined is given only in the case of a body corporate. Since the defendants are not a body corporate, there is no power under O. 48 to order their officer to be examined. The appeal must therefore be allowed and the order of the Deputy Registrar made on 29 March 1995 set aside. I do so with costs for the defendants here and before the Deputy Registrar.